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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,179	01/16/2004	William V. Alcini	2001U-001640	8074
27572 7590 10/09/2008 HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 828 BLOOMFIELD HILLS, MI 48303				
EXAMINER SAN MARTIN, EDGARDO				
ART UNIT 2837		PAPER NUMBER		
MAIL DATE 10/09/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/760,179

Applicant(s)

ALCINI ET AL.

Examiner

Edgardo San Martin

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1 – 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olszok et al. (US 5,821,474) in view of Itoyama et al. (US 6,155,954).

With respect to claims 1, 6, 16 and 21, Olszok et al. teach a method and apparatus for controlling exhaust flow in an exhaust system for a non-conventional internal combustion power source exhibiting, during operation, larger ranges of acoustic frequency, flow rate or pressure in exhaust flow than found in conventional internal combustion power sources, or exhibiting discontinuities in exhaust gas flow during operation (Fig.1, Col.1, Lines 32 – 51), the method comprising placing a passive temperature resistant valve (Fig.1, Item 5) in a path of exhaust gas flow, the valve operative to at least partially alter a characteristic of the exhaust gas flow for the larger ranges, or a restriction of the exhaust gas flow whenever a discontinuity occurs (Fig.1, Col.1, Lines 11 – 31, Col.3, Lines 8 – 29 and Fig. 2, item 5.1; Col. 3, lines 45-49, 57-62).

However, Olszok et al. fail to specifically and explicitly disclose wherein the exhaust system is for a non-conventional internal combustion power source as claimed by the applicant.

On the other hand, Itoyama et al. teaches a hybrid internal combustion power source cutting off the fuel supply in intermittent or coasting operation (Col.6, Lines 16 – 21) as described by Olszok et al..

It would have been obvious to a person with ordinary skill in the art at the time of the invention was made to employ the Olszok et al. design because Olszok et al. desires the muffler's use in a hybrid vehicle (Col. 1, Lines 40-43) such as provided by Itoyama et al.

With respect to claims 2 and 17, Olszok et al. teach wherein the characteristic of the exhaust gas flow comprises at least one of flow restriction, flow reflection and flow direction (Fig.1, Col.1, Lines 11 – 31, and Col.3, Lines 8 – 29).

With respect to claims 3 - 5, 9 – 14 and 18 - 20, Olszok et al. teach wherein the passive, temperature resistant valve (Fig.1, Item 5) is placed nearer to a midpoint (Fig.1, at Item 5 or 13) of the exhaust system than to an endpoint (Fig.1, Item 7) thereof.

With respect to claims 7 and 22, Olszok et al. teach wherein the passive, temperature resistant valve increases restriction of exhaust gas flow whenever a discontinuous decrease in exhaust gas flow rate occurs (Fig. 2, item 5.1, Col. 3, lines 45-62, Col.1, Lines 11 – 31 and Col.3, Lines 8 – 29).

With respect to claims 8 and 23, Olszok et al. teach wherein the passive, temperature resistant valve (Fig.1, Item 5) restricts exhaust gas flow via a valve surface extending substantially perpendicular to a longitudinal axis of exhaust flow (Fig.1).

With respect to claims 15 and 24, Olszok et al. teach wherein the valve surface (Fig.1, Item 5) is positioned in a resonator (Fig.1, Item 25) having an inlet coupled to an interior conduit (Fig.1, Item 3.1) extending into the resonator (Fig.1, Item 25) and terminating in the resonator adjacent to the valve surface (Fig.1, Item 5).

Response to Arguments

2. Applicant's arguments, see Appeal Brief, filed March 12, 2007, with respect to the rejection(s) of claim(s) 1 - 24 under Yashiro et al. (US 5,614,699) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Olszok et al. (US 5,821,474) in view of Itoyama et al. (US 6,155,954) as discussed above.

Conclusion

3. The attached hereto PTO Form 892 lists prior art made of record that the Examiner considered it pertinent to applicant's disclosure.

Contact Information

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edgardo San Martin whose telephone number is (571)272-2074. The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Benson can be reached on (571) 272-2227. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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